IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2)(b)
Description of case

Appeal from Order No. 136 of 2004

Date of decision: 26th September, 2006

A.F.R. (Approved for Reporting)

~~Not Approved for Reporting~~

Date Initials of Judge

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal from Order No. 136 of 2004

National Insurance Company Ltd.
through its Divisional Manager,
Divisional Office,
Near Jamuna Palace, Haridwar …… Appellant

Versus

1. Smt. Mithlesh w/o late Sri Rajendra Kumar Sharma
2. Km. Rasmi Kaushik d/o late Sri Rajendra Kumar Sharma
3. Km. Monika Kaushik d/o late Sri Rajendra Kumar Sharma, aged about 14 years.
4. Master Gaurav Kaushik s/o late Sri Rajendra Kumar Sharma, aged about 11 years.
5. Smt. Choti w/o Late Sri Mahar Ram.
   All r/o Village – Mannakheri, Thana Manlaur, District Haridwar.
6. Sri Pramod s/o Sri Pooran Chandra
   r/o 43, Chippibari, Devnand Vihar,
   Saharanpur …… Respondents

Sri D.S. Patni, Advocate with Sri Manish Dalakoti, Advocate for the appellant.
Sri Manish Arora, Advocate for respondents 1 to 5.
Sri Dharmendra Barthwal, Advocate for respondent no. 6.

JUDGMENT

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble Rajesh Tandon, J.

RAJEEVE GUPTA, C.J. (Oral)

This is insurer's appeal against the Award dated 20.01.2004 passed by Motor Accident Claim Tribunal/ Additional District Judge, Roorkee, Haridwar in Motor Accident Claim Case No. 25 of 2003.

2. The claimants, who are unfortunate widow, minor children and mother of deceased Rajendra Kumar Sharma, claimed compensation of Rs. 35,10,000/- for his death in the motor accident on 19.02.2003 when his motor-cycle bearing registration No. UP 10-B 3669 was dashed by the offending vehicle bus bearing registration No. UMU 9904 resulting in multiple serious injuries to Rajendra Kumar Sharma, who succumbed to those injuries immediately after reaching the Civil Hospital. The claimants

further pleaded that Rajendra Kumar Sharma was getting salary of Rs. 13,045/- as teacher in a Government College.

3. The owner and the insurer of the offending vehicle bus contested the claim and denied their liability to pay compensation to the claimants. The owner of the offending vehicle bus took the plea that the accident did not occur due to rash and negligent driving of the driver of the bus and in case of any liability to pay compensation to the claimants, it would be that of Insurance company. The insurer, on the other hand, took the plea that the accident occurred due to negligence of the deceased himself.

4. The claimants examined P. W. 1 Smt. Mithilesh, P.W. 2 Amarjeet , P.W.3 Ravindra Singh and P.W.4 Sanjay Bansal in support of their claim, whereas the owner and insurer of the bus did not examine any witness.

5. The Tribunal, on the evidence led by the parties, held that Rajendra Kumar Sharma died on account of the injuries sustained by him in the motor accident on 19.02.2003; the accident occurred due to the rash and negligent driving of the driver of the bus; and the insurer of the bus was liable to pay compensation to the claimants.

6. Relying upon the evidence led by the claimants about the income of the deceased including his salary certificate, the Tribunal assessed his income at Rs. 13,045/- per month and Rs. 1,56,540/- per annum. After deducting 1/3rd of the above amount as personal expenses of the deceased, the claimants' dependency was assessed at Rs. 1,04,360/- per annum. By multiplying the annual dependency of Rs. 1,04,360/- with the multiplier of '15', the compensation was worked out to Rs. 15,65,400/-. The Tribunal further awarded Rs. 10,000/- towards funeral expenses; loss of consortium to the widow; and loss of estate. Thus, a total sum of Rs. 15,75,000/- was awarded as compensation to the claimants for the death of Rajendra Kumar Sharma in the motor accident. The Tribunal further directed the insurer of the bus to pay interest on the above amount of compensation at the rate of 9% per annum in the event of its failure to pay the compensation within a period of one month from the Award.

7. Sri D.S.Patini, Advocate with Sri Manish Dalakoti, Advocate, the learned counsel for the appellant Insurance Company submitted that as the appellant – Insurance Company was granted permission U/s 170 of the Motor Vehicles Act to contest the claim on all available defenses, the quantum of compensation is being challenged in this appeal. The learned counsel submitted that the Tribunal has erred in assessing the compensation on the basis of the gross income of the deceased without deducting the permissible deductions (including the Income Tax) from the salary; the multiplier of '15' selected by the Tribunal is on the higher side in view of the dictum of the Apex Court in the case of **T.N. State Transport Corpn. Ltd. Vs. S. Rajapriya and others** reported in **(2005) 6 Supreme Court Cases 236;** and the interest awarded by the Tribunal @ 9 % per annum is also on the higher side.

8. Sri Manish Arora, the learned counsel for the claimants, on the other hand, supported the Award and submitted that the assessment of income by the Tribunal is based on the salary certificate of the deceased; the selection of multiplier of '15' is in line with the multiplier prescribed in the Second Schedule U/s 163-A of the Motor Vehicles Act and the Award of interest @ 9% per annum was on the basis of the prevalent rate of interest on the bank deposits in the year 2004.

9. As the appellant Insurance company has not challenged the finding recorded by the Tribunal that deceased Rajendra Kumar Sharma died on account of the injuries sustained by him in the motor accident; the accident occurred due to the rash and negligent driving of the driver of the bus; and the appellant Insurance Company was liable to pay compensation to the claimants, we hereby confirm the above findings recorded by the Tribunal.

10. Deceased Rajendra Kumar Sharma as per his salary certificate was getting gross salary of Rs. 13,045/-. From the salary certificate for the month of January 2003, adduced by the claimants in evidence before the Tribunal, it is apparent that a sum of Rs. 4000/- was deducted towards Income Tax. It is further apparent from the said salary certificate that

certain other amounts were also being deducted towards General Provident Fund, L. I. C. and Group Insurance. In our opinion, for the purpose of assessment of compensation, the income of the deceased ought to have been taken at Rs. 10,000/- per month. We, therefore, propose to recompute the compensation taking the income of the deceased at Rs. 10,000/- per month and Rs. 1,20,000/- per annum.

11. By deducting a sum of Rs. 30,000/- from the annual income of the deceased of Rs. 1,20,000/-, the claimant's dependency is assessed at Rs.90,000/- per annum. The multiplier of '15' selected by the Tribunal is certainly on the higher side in view of the dictum of the Apex Court in the case of **S. Rajapriya** (supra).

12. The Apex Court, in the case of **S. Rajapriya** (supra) observed in paras 8 to 10 & 17.

> "8. The assessment of damages to compensate the dependents is beset with difficulties because from the nature of things, it has to take into account many imponderables e.g. the life expectancy of the deceased and the dependants, the amount that the deceased would have earned during the remainder of his life, the amount that he would have contributed to the dependants during that period, the chances that the deceased may not have lived or the dependants may not live up to the estimated remaining period of their life better employment or income or might have lost his employment or income together.
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> 9. The manner of arriving at the damages is to ascertain the net income of the deceased available for the support of himself and his dependants, and to deduct therefrom such part of his income as the deceased was accustomed to spend upon himself, as regards both self-maintenance and pleasure, and to ascertain what apart of his net income the deceased was accustomed to spend for the benefit of the dependants. Then that should be capitalized by multiplying it by a figure representing the proper number of years' purchase.
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> 10. Much of the calculation necessarily remains in the realm of hypothesis "and in that region arithmetic is a good servant but a bad master" since there are so often many imponderables. In every case "it is the overall picture that

matters", and the court must try to assess as best as it can the loss suffered.

17. Considering the age of the deceased and the principles indicated above, the appropriate multiplier would be 12 and not 16 as adopted by the Tribunal and affirmed by the High Court. By applying multiplier 12, amount of compensation is fixed at Rs 4,50,000 (in round figures). He Tribunal has fixed interest @ 9% per annum from the date of the claim petition. Taking note of the prevailing rate of interest on bank deposits, the same is fixed at 7.5% per annum. It is stated that a sum of Rs 4,00,000/- has been deposited pursuant to the order dated 22-3-2004. The balance amount shall be deposited with the Tribunal within four weeks from today. Out of the total deposit 90% of the amount shall be kept in fixed deposit in the name of widow (Respondent 1), minor child (Respondent 2) and the mother (Respondent 3) in the proportion of 35%, 40% and 15% respectively. Rest 10% shall be paid in cash equally to the widow and the mother. Fixed deposits shall be made initially for a period of five years and no withdrawal permitted and only monthly interest will be paid, so far as the fixed deposits in the names of the widow and the mother are concerned. So far as the minor child is concerned, fixed deposit shall be made initially for a period of five years and shall be renewed till the child attains majority. The monthly interest on the deposit shall also be released to the mother as the guardian of the minor."

13. Deceased Rajendra Kumar Sharma was aged about 41 years on the dated of accident (19.02.2003). He would have remained in service for a further period of about 20 years. During this period of 20 years, he would have earned promotions and increments. The claimants before us are the widow of the deceased, aged about 38 years; her two minor daughters; one minor son; and his old mother. Considering that widow of the deceased, would be required to spend sufficient amount on the education of the three minor children and then on the marriage of her two daughters, we are of the opinion that the multiplier of '12' would be appropriate in the case. By multiplying the annual dependency of Rs.90,000/- with the multiplier of '12', the compensation works out to Rs. 10,80,000/-. The lump sum of Rs. 10,000/- awarded by the Tribunal towards funeral expenses, loss of consortium to the widow of the deceased and loss of estate, being on the lower side, is enhanced to Rs. 20,000/-. Thus, the claimants become entitled to receive a total sum of Rs. 11,000,00/- (Rupees Elecven Lakhs

only) as compensation for the death of Rajendra Kumar Sharma in the motor accident.

14. The Tribunal has erred in not awarding interest on the amount of compensation to the claimants and in directing only a conditional payment of interest in the event of failure of insurer of the bus to pay the amount of compensation within a period of one month from the date of the Award. The Tribunal, therefore, has deprived the claimants of their right to receive interest on the amount of compensation. The claim petition was filed on 27.03.2003 and the impugned Award was passed on 21.01.2004. The appellant Insurance Company appears to have deposited the amount of Rs. 13,00,000/- in compliance of this Court order dated 24.04.2004, on 20.05.2004. Out of this amount of Rs. 13,00,000/-, a sum of Rs. 6,50,000/- was remitted to the concerned Claims Tribunal on 28.09.2004 for disbursal to the claimants. Considering the above mentioned broad features of the case and with a view to avoid any delay in computation of the amount of interest by the Tribunal, we deem it proper to quantify the amount of interest for the above period at Rs. 50,000/-.

15. For the foregoing reasons, the appeal filed by the appellant Insurance Company is allowed in part. The compensation of Rs.15,75,000/- awarded by the Tribunal is modified (reduced) to Rs. 11,00,000/- (Rupees Eleven Lakhs only) and Rs. 50,000/- (Rupees Fifty Thousand only) towards interest. The balance amount of Rs. 6,50,000/- out of the amount of Rs. 13,00,000/- deposited by the appellant Insurance Company in compliance of this Court's order dated 24.04.2004, which is now lying with the Registry and the amount of Rs. 25,000/-(Rupees Twenty Five Thousand only) deposited by the appellant Insurance company as mandatory deposit U/s 173 of the Motor Vehicles Act while filing this appeal against the Award, be remitted to the concerning Claims Tribunal immediately. The claims Tribunal shall disburse the balance amount of Rs. 5,00,000/- {Rs.11,000,00/- (Rupees Eleven Lakhs only) towards compensation + Rs.50,000/-(Rupees Fifty Thousand only) towards interest (-) Rs.6,50,000/- (Rupees Six Lakhs Fifty Thousand only) (already permitted to be

withdrawn by the claimants)} to the claimants in the ratio and the manner mentioned in the Award. The balance amount of Rs. 1,75,000/- (Rupees One Lakh Seventy Five Thousand only) shall be released in favour of the appellant Insurance Company.

16. No order as to costs.

(Rajesh Tandon, J.) 26.09.2006

(Rajeev Gupta, C.J.) 26.09.2006

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